

UTAH AIR QUALITY BOARD
Executive Summary
Repeal of R305-3 (Emergency Meeting)
FINAL ACTION
February 6, 2008

What is the issue before the Board?	Whether to approve repeal of R305-3, a rule governing Emergency Meeting.
What is the historical background or context for this issue?	<p>R305-3 was promulgated in November 2002 following a suggestion from the Attorney General's Office. It was promulgated by each board within the Department, and was codified in the Department's rules, rather than in the rules of each Division.</p> <p>The rulemaking action to repeal the rule began in response to a state law that requires each state agency to review its administrative rules every five years. During this review, the agency must consider:</p> <ul style="list-style-type: none"> • The legal authority supporting/requiring the rule; • Any comments received during and since the original effective date or last five-year review supporting or opposing the rule; and • The reason/need for continuing the rule. <p>The five-year review is a formal process governed by both statutory and administrative rule requirements and requires each agency to complete and file the proper information with the Division of Administrative Rules (DAR) before the five-year period ends. Extensions to the five-year period can be requested by an agency for approval by DAR. Because the five-year period expired November 8, 2007 for R305-3, an extension to complete the five-year review was requested by the Attorney General's Office on behalf of DEQ and subsequently approved by DAR.</p> <p>As further discussed below, this review raised questions about the continuing need for the rule. Rulemaking to repeal the rule was initiated, following approval by each board, on Dec. 15, 2007. The comment period closed on Jan. 14, 2008. No comments were received.</p>

<p>What is the governing statutory or regulatory citation?</p>	<p>Section 63-46a-9 of the Administrative Procedures Act requires each state agency to review its administrative rules every five years.</p> <p>Subsection 52-4-202(5) establishes the requirements regarding emergency meetings of a public body (Board).</p>
<p>Is Board action required?</p>	<p>Yes. The Board is being asked to repeal R305-3 (Emergency Meeting).</p> <p>Because this is a department-wide rule, the other environmental program boards of DEQ are also taking similar action.</p>
<p>What is the Executive Secretary's recommendation?</p>	<p>The Executive Secretary, after considering legal advice, recommends the Board repeal R305-3.</p> <p>This rule applies to emergency meetings held by the Board. The statute requires only that the public body give the "best notice practicable," that attempts be made to notify all members of the public body, and that a majority of the members approve the meeting. The rule imposes requirements not included in the statute, e.g., posting of notices at the Department. Because this rule would, by definition, only be invoked in an emergency and the nature of that emergency cannot be predicted, it is not appropriate to impose requirements that are not required by statute. The agency recognizes that the requirements of the rule provide appropriate guidance, and intends to meet those requirements whenever possible. However, if the nature of the emergency prevents meeting those requirements, the boards must still be allowed to act as the Legislature intended.</p> <p>The Board will continue to follow the statutory requirements regarding emergency meetings under the Open and Public Meetings Act.</p> <p>There have been very few emergency meetings held within the Department of Environmental Quality.</p> <p>No comments have been submitted in response to the Notice of Rulemaking regarding this rule.</p>
<p>Where can more information be obtained?</p>	<p>Laura Lockhart, Attorney General's Office, 366-0290, (llockhart@utah.gov)</p> <p>The Utah State Bulletin for Dec. 15, 2007, found at: http://www.rules.utah.gov/publicat/bull_pdf/2007/b20071215.pdf</p>

R305. Environmental Quality, Administration.

[R305-3. Emergency Meeting.

R305-3-1. Purpose.

~~— The Department of Environmental Quality and the Boards established within the Department in accordance with Section 19-1-106 recognize that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public provisions of Sections 52-4-6(1), (2), and (3) cannot be met. Pursuant to Sections 52-4-6(5), under such circumstance those notice requirements need not be followed but rather the best notice practicable shall be given.~~

R305-3-2. Authority.

~~— This rule is enacted under the authority of Sections 63-46a-3 and 19-1-201(2)(k) and 202(1)(a).~~

R305-3-3. Procedure.

~~— (1) No emergency meeting shall be held unless an attempt has been made to notify all members of the Board of the proposed meeting and a majority of the convened Board votes in the affirmative to hold such an emergency meeting.~~

~~— (2) Public notice of each emergency meeting shall be provided as soon as practicable and shall include at minimum the following:~~

~~— (a) The agenda and notice of the meeting shall be posted in writing at the offices of the division or department.~~

~~— (b) If members of the Board may appear electronically or telephonically, each such notice shall specify the anchor location for the meeting at which all interested persons and members of the public may attend, monitor, and participate in the open portions of the meeting;~~

~~— (c) Notice to the Board members shall advise how they may participate telephonically or electronically and be counted as present for all purposes, including the determination of a quorum;~~

~~— (d) Written, electronic or telephonic notice shall be provided to at least one newspaper of general circulation within the state and at least one local media correspondent.~~

~~— (3) If one or more members of the Board appear electronically or telephonically, the procedures governing electronic meetings shall be followed, except for the notice requirement which shall be governed by these provisions.~~

~~— (4) In convening the meeting and voting in the affirmative to hold such an emergency meeting, the Board shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the Board to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of Section 52-4-6 could not be followed.]~~

KEY: emergency meetings, board meetings

Date of Enactment or Last Substantive Amendment: November 8, 2002

Authorizing, and Implemented or Interpreted Law: 63-46a-3; 19-1-201(2)(k); 19-1-202(1)(a)